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REASONS WHY AGENCY COUNSEL SHOULD BE PRESENT
WHEN EMPLOYEES ARE INTERVIEWED

Tactically, various approaches can be used in negotiating for the presence of agency counsel (not a supervisor), but it seems that the overall point of fairness and due process for the interviewee must be stressed. Following up on that point, one should also urge that the presence of agency counsel will not be a factor for delay but, indeed, will expedite the interviewing process. In this connection, the staffs of the Committees should be urged to try the process before they take a hard position against it. More specifically, the following points could be mentioned in the negotiations:

1. Basic fairness and due process -- an employee may be nervous and intimidated by the prospect of an interview. Certainly, he is entitled to the assistance of an agency lawyer in an interview about his official duties. The alternative may be the employees would be forced to incur the expense of a private lawyer which would create further security problems and more delay, etc. ("Delay" is a point to emphasize.)
2. The presence of agency counsel will expedite the interviewing process because counsel will be able to assist in rendering rapid determinations as to whether lines of inquiry may be fully explored. The point is that a nervous employee, uncertain of whether he is treading in highly sensitive areas, etc., may be inclined to check back repeatedly with his agency for clearance.
3. In the event a line of inquiry and the responses thereto indicate a possible violation of law by an employee, it seems only fair that the employee have somebody available other than his interrogator to advise him that he may wish to consult his own counsel before continuing. Surely, Congress will not wish to raise the specter of a "star chamber" process.
4. An agency has an obligation to investigate any misdeeds by its employees and, thus, there is every reason why the agency should be aware of the information furnished by such employees. (The relationship between items 3 and 4 should be noted and handled carefully.)
5. The staffs of the Committees will be making notes of the interviews, or taking transcripts, and the employee should be permitted to have his own note taker there. This will

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be of benefit to the staffs since the employee will be free to think about and answer the questions. (Of course, this raises the thought that if negotiations are not successful, consideration should be given to insisting on a copy of the transcript of each interview.)

Two additional reasons for having agency counsel present which are important but should not be argued are:

1. From a "morale" standpoint, it indicates to the employee that his agency is standing with him.
2. With respect to former employees - and for that matter present employees -- alert agency counsel could discern questions which might seem uncontroversial, but which when related to questions asked of other employees reveal a line of inquiry that must be reviewed by senior policy officials before responses are made.